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ABSTRACT

In terms of federal precedent, Indian education can be said to represent the avant-garde. Federal involvement in Indian education began in 1890 with tuition payment on a per capita basis for Indians attending public schools and continued with provisions of the 1934 Johnson O'Malley Act and the 1972 Elementary and Secondary Education Act. This report focuses on three distinct models of federal advocacy legislation: the Indian Education Act of 1972, the unsuccessful legislation intended to accompany the Indian Self-Determination Act of 1972, and Public Law 95-561, Title XI. The nature, form, structure and plan of federal assistance are vital questions. Any law that provides for advocacy through representation should meet three tests: (1) representatives from tribes must know the concerns of those represented (the parents); (2) representatives must speak for those concerned more effectively than the people themselves; and (3) school district people must acknowledge the authority and legitimacy of the representative. These conditions do not exist now because this tribal role has not evolved from the community itself but through the legislation, tribal governments are not as familiar with the issues as the people they represent, and school districts are accustomed to negotiating with groups of parents or committee representatives. Although there has been no visible movement in this direction, the law attempts to overcome these problems by allowing tribes to delegate their new authority. (NEC)

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INDIAN EDUCATION AND THE FRONTIERS OF FEDERAL ADVOCACY

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INDIAN EDUCATION AND THE FRONTIERS OF FEDERAL ADVOCACY

This paper was written for a rural education panel because many people in rural education are hoping for increased federal attention.

The arguments developed here are meant to reject the chicken soup theory of federal assistance. The nature, form, structure, and plan of federal assistance are vital questions. Any shift in federal policy that creates a potential for change can make things better. It can also make them worse.

I. History of Federal Advocacy and Indian Education

When Indian education is compared with other education in the United States, it is usually placed somewhere among the stragglers. That's an understandable placement in terms of most criteria, but in terms of federal precedent, Indian education can be said to represent the avant-garde.

Federal aid to public education was a hotly debated issue in every part of the country, except Indian country, during the late 1940's. Federal involvement in Indian education had begun in 1890 with tuition payments on a per capita basis for Indians attending public school. There were two reasons for this. (1) Indians were not citizens of the United States and the federal government was considered responsible for any Indian programs or benefits. (2) Indians, or at least federally connected Indians, lived on land that was exempt from property taxes, then the main source of public school income. On both these counts, it was easy for the public schools to ask for and receive full tuition payments for Indians attending their schools.

By 1934, the federal government was handling hundreds of tuition contracts with separate school districts. The Johnson O'Malley Act was passed that year to enable the federal government to transfer their contracting authority to states. The Act was also meant to facilitate the eventual transfer of Indian students from Bureau of Indian Affairs schools to public schools when they were available.

Insofar as the new law was designed to simplify tuition contracts, it was generally successful. The Bureau of Indian Affairs also attempted to assign advisers to the new state contractors so they could transfer some of their Indian education experience along with the funding. That was not successful. There was no jurisdictional agreement that would allow the placement of a federal official within a State Department of Education, and the Bureau of Indian Affairs advisory role depended completely on the political and diplomatic skills of the individuals

assigned to the states. The few states that used part of the federal money to establish special Indian programs were careful to point out that they were doing it on their own. The principle of federal funding without federal strings remained intact.

Pressure for federal aid to education after World War II did not originate in Washington, D.C. but in those districts that were hurt financially by the presence of tax exempt federal land or tax exempt federal activity.[1]

When the Impact Aid laws were passed in 1950, they provided federal funds for school operational expenses under P.L. 874 and construction funds under P.L. 815. There were protective sections in both laws that prohibited school districts from decreasing state or local support and substituting federal money, but there were no program requirements. Indians attending public schools were specifically excluded from the Impact Aid Law because Johnson O'Malley funds were serving the same purpose.

In 1958, the Impact Aid laws were amended to include Indians. School districts could choose either Impact Aid or Johnson O'Malley. The next year Bureau of Indian Affairs regulations were changed and school districts could apply for both Impact Aid and Johnson O'Malley under "special and extraordinary circumstances"--never defined beyond that phrase. Ninety-eight per cent of the school districts claimed "special and extraordinary circumstances" and received funds from both sources. There were still no programatic requirements.

The principle that the federal government should give money but should never offer so much as a word of advice or hint of direction to public schools seemed to be a part of a national creed. Any congressional move offering federal direction to public schools in the 1950's would problably have led to at least an informal loyalty investigation.

The Elementary and Secondary Education Act became law in 1965. At the time of its passage, President Johnson made a stirring speech that is still quoted occasionally at regional and national ESEA meetings. Quick histories of the 1960's link this law with the War on Poverty and the Civil Rights Act. Whatever the motives of the active proponents of the law, the public school acceptance of federal money with programs that required conformity to federal guidelines deserves some attention.

[1] The term federal activity is a broad one that can cover everything from a missile range to a post office. The federal compensation theory is that the federal government is providing employment to people who would otherwise be working in a tax producing private industry.

The Elementary and Secondary Education Act was passed because of federal involvement in civil rights issues. The benevolent supporters of the Act wanted it passed so that schools that were newly integrated could provide a good education for the blacks that would be coming into their system. The school districts accepted the programs from the federal government, not because they wanted to take better care of their blacks, but because the blacks in their school system were considered federal blacks. From a school district point of view, the issue was clear. They hadn't decided to allow blacks in their schools, the federal government had. Therefore, if the federal government was going to force a new population on them, let the federal government pay for it. The school districts certainly did not want strings attached, but that was better than nothing. The districts lacked the arguments they had used with Indians and government employees for direct compensation.[2]

One indication of how well the belief in federal financial responsibility or federal policies has worked can be found in the statistics on state funding sources (NEA, 1977). The state with the highest percentage of federal funding is not Alaska, that bastion of federal land and federal activity: it is Mississippi. Other races were of course also eligible for ESEA funding and programs, but the political question was black.

Ninety seven per cent of Indian students qualified for the program, and, ironically, it was the Indian experience with this program that began an Indian movement for the reform of Johnson O'Malley. The demands were for federal regulations or legislation that would require parental and community involvement in special need, supplementary programs. A special Kennedy (Robert, then Edward) subcommittee published a report in 1968 titled: "Indian Education: A National Tragedy, A National Challenge." In spite of, or perhaps because of the dramatic title, there were three major pieces of Indian education legislation being actively considered by 1972.

This raises another question. How can a group that represents 1/2 of one percent of the population generate so much federal activity? It has to do not with an inborn Indian genius for lobbying, but rather with the history of federal Indian relations. Although a half of one percent of the population is Indian, 4% of land in

[2]School districts that have the required percentage of students from federal housing projects are compensated through Impact Aid. They were once required to provide compensatory programs, but that was changed by P.L. 95-561, Title X, and the money now goes into the general fund.

the United States is Indian land. Twenty-two percent of all legislation deals specifically with Indian issues. There are also times in politics when the "Small is Beautiful" axiom applies to population groups.

II. Models of Federal Advocacy Legislation

There are three models of federal advocacy legislation that will be considered here. The first is the Indian Education Act of 1972, an amalgam of the three bills pending that year. The second is an unsuccessful attempt at legislation that was intended to accompany the Indian Self-Determination Act of 1972. The third is the most recent Indian legislation, P.L. 95-561, Title XI.

The summary of the laws and the discussion that follows will deal only with those portions of the laws that effect Indians in public schools.[3]

1. Part A of the Indian Education Act.

This Act provided funding and programs for public school districts educating students on a per capita entitlement basis. The district must have a minimum of ten Indian students to apply, except in Oklahoma, California and Alaska where one will suffice. The law authorizes 100% of the per pupil educational costs in the district. In the eight years of the law's existence no more than 10% of this amount has ever been appropriated.

The law provides for committees which must be selected by the Indian community and 51% of the members must be parents of Indian children. Teachers of Indian children and Indian secondary students must also be represented. This committee then deisgns a program which must be supplementary and must, in their view, meet the special needs of Indian students.

Obviously the local school district has to approve the program, but they can not be funded without the approval of the committee. The law has three provisions that go beyond ESEA, Title I. (1) The committee must be selected from the outside, (2) The committee is more than advisory in that it has absolute sign off power, (3) If the program does not supplant, the Office of Education is not permitted to make any value judgments as to the appropriateness of the program. The decision as to how to meet the special needs of Indian students is made only by

[3] Twenty-five percent of all federally connected Indians attend Bureau of Indian Affairs schools, Tribal schools contracted through the Bureau of Indian Affairs or Mission or other private schools.

the district and the committee. The program can consist exclusively of educational programs or exclusively of support services or any combination of the two.[4]

2. S.1017 Second Section. Rejected on Senate floor.

The second law, once a part of S.1017, left the Indian Education Act intact and attempted to reform Johnson O'Malley.[5]

This bill was under the juridiction of the Interior committee which gave it unanimous approval. It followed the Indian Education Act in providing for parent commitees selected from outside the school district, but it differed in one important way. It built the programs directly into the legislation.

It required all school districts educating Indian students to provide one teacher aide for every twenty Indian students and one conselor for every thirty Indian students. Indian preference was to be applied in all cases. It also required school districts to pay all teachers of Indian students at the highest teachers' salary level in the district or the state if that was higher. The estimated cost of the legislation was more than double the existing Johnson O'Malley budget.

As people who would be affected by the legislation learned of its existence, they rushed to the attack. Indians in education opposed it because the required programs would remove all local Indian committee choice. The public schools opposed it even more vehemently because the federal government was promising to fulfill their worst nightmares about federal interference. The bill was withdrawn on the floor of the Senate because the opposition was well represented.[6]

By 1976 a federally connected Indian student in public schools would usually be eligible for three special federal programs: ESEA Title I, Indian Education Act programs and Johnson O'Malley programs.[7]

[4] The committee is required to consult with the larger Indian community and to document in the application how they have done that.

[5] Several attempts at regulatory reform had been tried earlier. They succeeded later that year shortly after this bill was discarded.

[6] The section of the law dealing with teachers' salaries was, of course, impossible for any school district.

[7] Johnson O'Malley had been reformed and was supplementary. Within a public school system it was virtually indistinguishable from Indian Education Act programs.

With all these programs, it was still the general consensus of participants and observers that Indian education in public schools was remarkably unsuccessful. Simple logic suggested that if three special programs didn't work, there was no particular reason to believe that a fourth would.

3. Public Law 95-561, Title XI

The House Education and Labor Committee had appointed a Study Group on Indian Education in 1975 that had legislative jurisdiction over Indian education in public and BIA schools. Pushed by Indian lobbying groups and openly motivated by the need to provide significant change, this study group successfully attached Title XI to the other ESEA continuation amendments.

In the initial draft of the bill, they began by doubling Impact Aid payments for students living on Indian land.[8]

HEW objected, and the amount of Impact Aid was cut from 200% to 125% of existing entitlements. Even at the reduced level, the national average Impact Aid payments is $1,000 per pupil. The similarity to other tuition or federal compensation programs ends here.

In order to apply for Impact Aid, a school district with students from Indian land must make a special attachment to what had been a cut and dried procedure. That section of the law follows.

P.L. 95-561 Title XI, Section 1101

> "(B) Each local educational agency shall establish such policies and procedures as are necessary to insure that--
>
> "(i) Indian children claimed under section 3(a) participate on an equal basis in the school program with all other children educated by the local educational agency;
>
> "(ii) applications, evaluations, and program plans are adequately disseminated to the tribes and parents of Indian children claimed under section 3(a); and
>
> "(iii) tribes and parents of Indian children claimed under section 3(a) are--
>
> "(I) afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the ways by which they can assist their children in realizing the benefits to be derived from the educational programs assisted under this paragraph;
>
> "(II) actively consulted and involved in the planning and development

[8] This meant, in effect, that the federal government would pay the equivalent of the existing per pupil education costs for Indian students. From a purely financial point of view, it marked a return to the pre-Johnson O'Malley federal tuition payments, except that this time the funding would come through HEW rather than the Bureau of Indian Affairs.

of programs assisted under this paragraph; and,

"(III) afforded a general opportunity to present their overall views on the educational program, including the operation of such programs, and the degree of parental participation allowed.

"(C) (i) Any tribe, or its designee, which has students in attendance at a local educational agency may file a written complaint with the Commissioner regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of subparagraph (B) of this paragraph.

On the hearing procedure described above there is a carefull, worked out and precisely timed system with which the Commissioner of Education and the local school district must comply. (see appendix A.)

If the Commissioner agrees with the tribe or tribes and the school district does not make the requested changes, the Commissioner must withold Impact Aid payment unless the tribe or tribes involved request that the funds be released to prevent disruption of the school's programs.

If the commissioner agrees with the tribe or tribes and the funds are cut off, they can then elect to use the BIA school system or establish their own tribal school with BIA funds under the authority of P.L. 93-638, the Indian Self-Determination Act. But that is a route the tribes can take even if the Commissioner of Education doesn't agree with them. That authority existed under the Indian Self-Determination Act for close to three years before this law was passed.

The law refers to "tribes and parents of Indian children . . . being actively consulted and involved in the planning and development of programs assisted under this paragraph." There are no Impact Aid programs. The funds have always been non-categorical and continue to be. They appear once in a school district budget as a lump sum source of income. Since they don't exist separately but are woven throughout the school program, involvement in their planning and development means involvement in the basic school program with all its non-categorical funds.

III. Federal Advocacy Models in Public Schools

These three laws represent three distinct models of advocacy.

1. The Indian Education Act

A committee selected by parents of Indian students served, teachers of those Indian students, and the students themselves (in secondary schools) selects a

committee with membership from the same three groups with a requirement that the parents be in a majority.

The committee and the school district then have a double key system: one cannot institute an Indian program without the other.

The federal government provides the funding but all decisions are made locally by the people who are potentially closest to the program.

A major assumption of the law is that slowly the Indian parents and the school district personnel and the district leadership will develop cooperative ideas.

2. Original Title II of the Indian Self Determination Act. (Not passed)

The law creates a committee but the legislation itself dictates exactly how the funds will be used. The law was based on the assumption that local Indians would never be able to change a local school district and therefore the districts must be told what to do from above. Since the basic premise was resented by both Indians and schools, the bill was withdrawn.

3. P.L. 95-561

This law assumes that supplementary programs have been and will continue to be relatively ineffectual. Real change can only come through changes in the basic school program.

Few people in education would challenge this assumption. The problem is trying to figure out a way in which the federal government can effect basic change in the public school systems which are not under federal jurisdiction. Because Impact Aid is federal money and because it is non-categorical, it provides the federal opening to the entire program.

Indian Impact Aid money amounts to 10% of the total funding from this program, but only the Indian portion is now subject to the special provision. This is true not only because of the special Federal/Indian relationship but because Indians are widely considered to be both disadvantaged and different. Military and government people may have days when they feel disadvantaged and different, but they would probably not enjoy being described as such by outsiders.

Certifications of equal educational opportunity for Indian students have been a requirement on Impact Aid applications since 1972, but it's difficult to imagine a school district that would claim unequal educational opportunity.

The challenge for the authors of this legislation was the development of an enforcement system. Once they decided on a well-defined and mandatory hearing procedure, they had to decide who would speak for the Indian interests in the school district. They decided on the tribe (or tribes when there were more than

one) in a school district. It's not a surprising choice. Indian _____. Tribe is easy and natural associative word. All Indians mentioned in this legislation live on tribal land, almost always the land of their own tribe. Besides, or so goes the argument, if you gave the authority to anyone but the tribe, you would undercut tribal authority.[9]

The federal advocacy assumption in this law is that you create the potential for fundamental change rather than helpful additions, and you back up the potential by building considerable power into one representative group.

The authors of the legislation do not claim that tribes are the only possible representatives. They do say that given the alternatives, tribes are the most logical representatives because they already represent their tribal membership within a defined and structured government. This is a situation that exists with no other group in the United States because no one else has dual (Tribal/U.S.) citizenship.

The basic questions are:

1. Is this is a good idea for an advocacy system?
2. Will this particular system achieve its purposes?

Fundamental changes in education can be urged, encouraged or declared on a school district, state, or national level. They can only take place within a school building, in fact within a room where teaching and learning take place.

Placing the reform questions on a school district level with complaint power in the hands of the tribe rather than the parents creates a potential for confrontation that may or may not reflect what is actually going on in a school building. It also creates a potential for setting non-existent education questions.

The advocacy style of the Indian Education Act strives for immediacy, for a modest agreement among the participants. Whether or not this is acheived is not the present question. That is the intent of the law. It generally works better in smaller rural school districts because the program discussion centers on a school building. It is more abstract in large districts when Indian students are spread throughout the system.

[9]It's interesting to speculate on how this might work if it were extended to military participants. Who would then control the hearing procedures? Base commanders and their general staff?

P.L. 95-561 calls for a school district-tribal negotiation between two groups who represent political authority. It is, not incidentally, a new authority for the tribes. No Indian tribe in the United States has ever represented parents interests in negotiations with school districts, except at the parents request, and no tribe would presume to tell parents where to send their children to school. That has always been a family matter.

In some cases, the law may lead to a confrontation between two Indian political structures with the same tribal membership--an all Indian school board and the tribal government of the Indian school board members. Since those Indian school board members ran for their positions out of a presumed specific interest in education, the law is sensible on this point only if you believe that the tribal government will, for some reason, represent the interests of the Indian children better than the school board members.

Change is needed in the name of a specific group and the federal government decides it will assist that group. But if the people to be helped seem to lack the structure, or the authority, or the necessary will to help themselves, they must be represented by a politically strong group that will act on their behalf.

This is the advocacy structure of P.L. 95-561, but it is also similar to earlier structures developed through the Office of Economic Opportunity and their Community Action Programs and later through LAU centers and regional branches of the Office of Civil Rights.

The risk is always the same. Those who act in the name of the declared victims are not necessarily required to solicit the advice, opinions or concerns of the people for whom they speak.

The Office of Civil Rights has launched complaints against Indian and Native Alaskan school districts for violating the rights of their own students. Who told them the rights were being violated? Oddly enough, that is sometimes not discussed at all. The Office of Civil Rights has been known to act out of its own sense of justice or injustice.

In this particular law, the authority given to the tribes goes so far beyond precedent that many school districts are furious with local tribes even when those tribes have yet to learn of the existence of their new powers and might not want to use them at all.

When school districts feel their fundamental authority has been threatened, they tend to become frustrated and angry. They will not direct their resentment toward the Office of Education and Impact Aid. HEW didn't sponsor the law, they

opposed it. They also write the checks. The local Indians present a far safer target.

The school districts can rebel and refuse to apply for Impact Aid. Two districts have already done this. This is obviously not the best solution for districts because it reduces federal funding that has always been regarded as just compensation. It is necessary to consider the possibility that their first cutbacks in the districts will be in the Indian schools.

Any law that provides for advocacy through representation should meet at least three tests:

(1) The representative knows the concerns of those people represented. (In this case, the tribe knows what the parents want and don't want.)

(2) The representative speaks for those concerns more effectively than the people themselves.

(3) The people on the other end (in this case the school district people) acknowledge the authority and legitimacy of the representative (the tribe.)

It's possible that these conditions may one day be met, but they do not exist now for several reasons.

1. This particular tribal role has not evolved from the community itself. It has been granted by the legislation.

2. In every school district with Indians there are education committees that are far more familiar with education issues than the tribal governments that are now supposed to speak for them.

3. School districts are accustomed to negotiating with groups of parents or committee representatives. The sudden tribal authority in these matters is as new to them as it is to the parents. Ideological disputes between local governments and tribal governments are common and of long standing. They involve water rights, hunting and fishing disputes, law enforcement and other complicated questions.

School officials may or may not have been directly involved in these issues, but they know of them and their information comes from the distinctly non-Indian press. There is nothing in the historical background that will make school districts prefer tribal governments to Indian parents.

The law attempts to overcome these problems by allowing tribes to delegate their new authority. There has been no visible movement in this direction. If it should happen because exceptionally strong Indian education

committees are able to pressure their tribes effectively, it will mean only that the authority is back where it was before the law was passed.

It is apparently difficult for many Washington policy makers to look at local change processes and not conclude that they are far too slow. Their impatience frequently seems justified by the fact that the cries for meaningful change on a local level have often come from those who want no change at all.

When federal policy calls for abrupt changes, it's always worth asking who the change agents will be. If, for example, the staff size of every LAU Center and every regional OCR Center was increased tenfold tomorrow, there would be a significant increase in activity. That might give new power to the powerless. It might also serve only to give louder voice to the voices that have already spoken.

This paper should not be read as an argument against any and all federal involvement. It also does not argue for excessive caution in the face of the school district authority: "Don't Rock the Boat." It is a variation on that hackneyed advice from the boat owners. If the boat is going to be rocked, be sure you're the one who's doing the rocking. The federally chosen advocates have less to gain and less to lose.

PUBLIC LAW 95-561

TITLE XI

PART A

SECTION 1101 (a-d)

PART A - Assistance to Local Educational Agencies Amendment to Public Law 874

Sec. 1101 (a) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 3(d) (2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by adding at the end thereof the following new subparagraph:

"(D) The amount of the entitlements of any local educational agency under this section for any fiscal year with respect to children who, while in attendance at such agency, resided on Indian lands, as described in clause (A) of section 403(1), shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 125 per centum."

(b) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 5(a) (2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is repealed and section 5(a) (1) of such Act is redesignated as section 5(a).

(c) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 5(b) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by inserting after paragraph (2) (as added by section 1005 of this Act) the following new paragraph:

"(3)(A) Payments of entitlements under section 3(d)(2)(D) of this Act shall be made only to local educational agencies which have, within one year of the date of enactment of this paragraph, or when local educational agencies are formed after such date of enactment, within one year of their formation, established such policies and procedures with respect to information received from Indian parents and tribes as required by this paragraph and which have made assurances to the Commissioner, at such time and in such manner as shall be determined by regulation, that such policies and procedures have been established. The Commissioner shall have the authority to waive this one-year limit for good cause, and in writing to the tribes to be affected.

"(B) Each local educational agency shall establish such policies and procedures as are necessary to insure that-

"(i) Indian children claimed under section 3(a) participate on an equal basis in the school program with all other children educated by the local educational agency;

"(ii) applications, evaluations, and program plans are adequately disseminated to the tribes and parents of Indian children claimed under section 3(a); and

"(iii) tribes and parents of Indian children claimed under section 3(a) are –

"(I) afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the ways by which they can assist their children in realizing the benefits to be derived from the educational programs assisted under this paragraph;

"(II) actively consulted and involved in the planning and development of programs assisted under this paragraph; and

"(III) afforded a general opportunity to present their overall views on the educational program, including the operation of such programs, and the degree of parental participation allowed.

"(C)(i) Any tribe, or its designee, which has students in attendance at a local educational agency may file a written complaint with the Commissioner regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of subparagraph (B) of this paragraph.

"(ii) Within ten working days from receipt of the complaint, the Commissioner shall–

"(I) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or, if the Commissioner determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

"(II) designate a hearing examiner to conduct the hearing; and

"(III) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

"(iii) The hearing shall be held within thirty days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

"(iv) The complaining tribe, or its designee, and the local educational agency shall be entitled to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceedings.

"(v) Within thirty days of the completion of the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial actions (if any) which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Commissioner.

"(vi) Within thirty days of his receipt of the findings, recommendations, and record, the Commissioner shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for his decision.

"(vii) Upon completion of his final determination, the Commissioner shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Commissioner's final determination. The final determination of the Commissioner shall be subject to judical review.

"(viii) In all actions under this subparagraph, the Commissioner shall have discretion to consolidate complaints involving the same tribe or local educational agency.

"(D) If the local educational agency rejects the determination of the Commissioner, or if the remedy required is not undertaken within the time established and the Commissioner determines that an extension of the time established will not effectively encourage the remedy required, the Commissioner shall withhold payment of all moneys to which such local agency is entitled under section 3(d)(D) until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency; PROVIDED, that the Commissioner may not withhold such moneys during the course of the school year if he determines that it would substantially disrupt the educational programs of the local educational agency.

"(E) This paragraph is based upon the special relationship between the Indian nations and the United States and nothing in it shall be deemed to relieve any State of any duty with respect to any citizens of that State".

(d) WITHIN ONE YEAR OF THE DATE OF ENACTMENT OF THIS ACT, THE SECRETARY, IN COOPERATION WITH THE COMMISSIONER, SHALL PROPOSE AND PROMULGATE SPECIAL REGULATIONS WHICH WILL PROVIDE THAT WHERE A LOCAL EDUCATIONAL AGENCY DOES NOT UNDERTAKE THE REMEDIAL ACTION REQUIRED BY THE COMMISSIONER UNDER SECTION 5(b)(3)(C)(vi) OF THE ACT OF SEPTEMBER 30, 1950 (PUBLIC LAW 874, EIGHTY-FIRST CONGRESS) AND THE COMMISSIONER DETERMINES THAT AN EXTENSION OF TIME WILL NOT EFFECTIVELY ENCOURAGE THE REMEDY, THE AFFECTED TRIBES MAY ELECT TO CONTRACT WITH THE BUREAU UNDER TITLE I OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT TO PROVIDE EDUCATIONAL SERVICES PROVIDED BY THE LOCAL EDUCATIONAL AGENCY OR ELECT TO HAVE SUCH SERVICES PROVIDED BY A BUREAU OF INDIAN AFFAIRS SCHOOL. SUCH REGULATIONS SHALL ALSO ESTABLISH PROCEDURES WHEREBY THE FUNDING NECESSARY TO PROVIDE SUCH EDUCATIONAL SERVICES MAY BE OBTAINED. AND ESTABLISH SUCH PROCEDURES AS ARE NECESSARY TO INSURE ORDERLY AND EXPEDITIOUS TRANSITION IN PROVISION OF EDUCATIONAL SERVICES.

(e) Effective with respect to fiscal years beginning on or after the date of the enactment of this Act, section 5(c)(2)(A) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), as amended by section 1007 of this Act, is amended by redesignating divisions (ii) through (vi) as divisions (iii), through (vii), respectively, and by adding after division (i) the following new division:

"(ii) to each local educational agency which provides free public education for children who reside on Indian land, as described in clause (A) of section 403(1), which equals 75 per centum of the amount to which such agency is entitled under section 3(d)(2)(D);".